

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

DEPT OF TRANSPORTATION
DOCKETS

DOT REL -2 A 9 03

In the Matter of:

ATLAS CHEMICAL, INC.,

Respondent.

**Docket No. FMCSA-2007-28617¹
(Western Service Center)**

ORDER

1. Background

On May 14, 2007, the California Division Administrator, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim (NOC) against Atlas Chemical, Inc. (Respondent).² The NOC alleged one violation of 49 CFR 383.23(a)—operating a commercial motor vehicle (CMV) without a valid commercial driver's license (CDL)—based on a compliance review completed on April 26, 2007. The NOC proposed a civil penalty of \$1,910.

On June 1, 2007, Respondent replied to the NOC by submitting a document titled "Reply to the Notice of Claim, Mitigating factors" and tendered full payment of the proposed penalty. Respondent admitted that the driver cited in connection with the violation of § 383.23(a) did not have a CDL while operating a CMV in commerce, but

¹ The prior case number was CA-2007-0448-US1067.

² Attachment A to Field Administrator's Motion for Final Order Requesting Finding on the Violation Charged in the Notice of Claim and Memorandum of Law in Support (hereinafter referred to as Motion for Final Order).

denied that it knew the vehicle he was driving qualified as a CMV requiring a CDL until after the transportation occurred.³

On July 18, 2007, the Field Administrator for FMCSA's Western Service Center (Claimant) filed a Motion for Final Order requesting that this matter be adjudicated and that a final order be entered against Respondent in order to preserve an accurate and complete compliance and enforcement history. Claimant submitted documents in order to establish a *prima facie* case that the violation set forth in the NOC occurred. Respondent did not reply to the Motion for Final Order.

2. Decision

Section 386.14(b) of FMCSA's Rules of Practice provides three options for replying to an NOC: (1) paying the full amount asserted in the NOC in accordance with 49 CFR 386.18; (2) contesting the claim by requesting administrative adjudication; or (3) seeking binding arbitration. Section 386.18(c) provides that payment of the full amount in response to the NOC constitutes an admission of the facts alleged therein, unless objected to in writing, and will result in the NOC becoming the Final Agency Order. Claimant argued that notwithstanding Respondent's written objection to the facts alleged in the NOC at the time it tendered payment, § 386.18(c) permits him to adjudicate the claim through a motion for final order.

³ Attachment B to Motion for Final Order. A driver must have a CDL to transport property in a vehicle with a Gross Vehicle Weight Rating (GVWR) of 26,001 lbs. or more. Respondent claimed that when it purchased the vehicle in August 2006, the salesman asserted that the GVWR was 26,000 lbs. Respondent claimed it did not obtain documentation of the true GVWR until June 1, 2007, the date of its reply, and submitted, as Exhibit A to its reply, documentation from the vehicle dealer showing the GVWR to be 29,000 lbs.

Although Respondent submitted what it considered to be mitigating factors, it admitted that its driver did not have a CDL and provided documentary evidence supporting Claimant's allegation that the vehicle's GVWR was 29,000 lbs. Therefore, rather than objecting to the facts alleged in the NOC, Respondent admitted them. Even if Respondent did not know the vehicle's true GVWR at the time the violation occurred, it would still have violated § 383.23(a).⁴ Moreover, Respondent should have known a CDL was required to operate the vehicle because documentation provided to Respondent at the time of sale showed the vehicle's GVWR to be 29,000 lbs.⁵

Because Respondent's reply did not include a written objection within the meaning of § 386.18(c), its payment of the proposed civil penalty in response to the NOC constituted an admission of all facts alleged in the NOC and, as provided in 49 CFR 386.18(c), the NOC became the Final Agency Order. Consequently, entry of a Final Order by the Assistant Administrator, as requested by Claimant, is unnecessary.

THEREFORE, *It Is Hereby Ordered*, that Claimant's Motion for Final Order is denied, this proceeding is terminated, and the docket is closed.


Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

6-30-09
Date

⁴ See *In the Matter of Big Country Oil, Inc.*, Docket No. FMCSA-2000-7019, Final Order, September 4, 2003 (Field Administrator established *prima facie* case of § 383.23(a) violation although Respondent claimed the violation was unintentional).

⁵ See Exhibit 4 to the Motion for Final Order.

CERTIFICATE OF SERVICE

This is to certify that on this 1 day of July, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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